Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

Docket No._____

IN THE SUPREME COURT OF THE UNITED STATES

JESSIE D. MCDONALD, Pro se,

Petitioner

v.

THE STATE OF TENNESSEE,

Respondent.

On Petition for Writ of Certiorari

To the Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

For the Petitioner:

Jessie D. McDonald, Pro se
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27 pp

QUESTIONS PRESENTED

1. WHETHER §39-1901, TCA WAS CONSTITUTIONALLY VALID TO SUPPORT THE CONVICTION IN THE TRIAL COURT IN JANUARY OF 1973 ?

2. WHETHER MCDONALD WAS PROPERLY GIVEN NOTICE IN JANUARY OF 1973 OF WHAT WAS PROHIBITED IN §39-1901,TCA AT THE ORIGINAL TRIAL ?

3. WHETHER THIS CONVICTION IS IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SINCE THERE IS NO INDICTMENT TO SUPPORT THE CHARGE THAT THE CONVICTION IS BASED ON ?

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jessie D. McDonald, pro se respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Tennessee Supreme Court in this proceeding on June 8, 2000, where the state statute that the conviction is based on was unconstitutional at the time the case was brought to trial and in order to resolve the issue where the state supreme court departed from the accepted and usual course of judicial proceedings to affirm the conviction at the trial.

OPINIONS BELOW

The orders of the Tennessee Supreme Court that gives rise to this petition, are reprinted in the Joint Appendix, on page A-1 where on June 8, 2000, the state supreme court denied the Motion to recall its mandate and a request to issue a nunc pro tunc order and the Motion for leave to move for reconsideration on June 30, 2000, at page A-2.

TABLE OF AUTHORITIES

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Fred Harry Rogers v. Carol Howes, Docket No. 96-1862 and under the Electronic Citation: 1998 Fed. App. 0162P(6th.Cir).	8, 13
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Statutes

§39-1901, TCA 4, 5, 8, 9, 11

Rule Page[s]

Rule 60.02 of
Tennessee Rules of Civil Procedure 4, 11

JURISDICTION

On June 8, 2000, the Tennessee Supreme Court issued an order rejecting the petitioner's Motion to Recall Mandate. The court further overruled McDonald's motion to reconsider on June 30, 2000. Pursuant to Rule 13.1 of this Court Rules, this petition is being filed within 90 days of the denial of rehearing.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a) [See Appendix, Page A-8]

CONSTITUTIONAL PROVISIONS

The petitioner is relying on the Fifth and Fourteenth Amendments to the United States Constitution, which are set out verbatim in the Joint Appendix, on page A-6 and A-7.

STATEMENT OF THE CASE

At the time this case was brought to trial in January of 1973, §39-1901,TCA was unconstitutional because it did not provide McDonald with proper notice of what was permitted and prohibited until the court's interpretation unreasonably included the circumstances of this case, in January 19, 1976. This federal question was first raised in the state supreme court by Motion for Leave to file a Motion to Recall its Mandate, and to issue a nun pro tunc order, which was denied on June 8, 2000 and a Motion to Reconsider was also denied on June 30, 2000. [See Orders in Appendix at pages A-1 and A-2]

McDonald's conviction was reinstated by the state supreme court, after the court of criminal appeals reversed the conviction because there was no indictment in the record to support the charge which the conviction was based on. This federal question was first raised in a Motion for Relief from Judgment, pursuant to Rule 60.02 of Tennessee Rules on Civil Procedure, based on the fact this judgment was obtained

through fraud in the attorney general's office. The motion was denied [See-Order at A-3 (Appendix)] and the Motion to Reconsider was also denied.[Order at A-4(Appendix)]

REASONS FOR GRANTING THE WRIT

1. Section 39-1901,TCA was constitutionally void as applied in this case against McDonald at the time this case was brought to trial in 1973.

When this case was brought to trial in January of 1973, §39-1901,TCA had never been reviewed before the Tennessee Supreme Court for a judicial interpretation to determine its constitutionality and was not considered until January 19, 1976.

In January of 1973, when this case was brought to trial in Nashville and Davidson County Criminal Court, the statute read as follows:

" 39-1901. False Pretense. ---- Any person, who, by any false pretense, or by any false token or counterfeit letter, with intent to defraud another, obtains from any person to any personal property, or the signature of any person to any written instrument, the false making of which is forgery, shall, on conviction, be punished as in case of larceny.

The words "false pretense" include all cases of pretended buying, borrowing, or hiring, Bailment or deposit, and all cases of pretended ownership, where the person obtaining possession

intended, at the time he received the property, feloniously to steal the same."

The indictment that this conviction rely on states as follows: " State of Tennessee, Davidson County

Third Count

January Term of the Criminal Court, 1973

The Grand Jurors for the State of Tennessee, duly elected, impaneled, sworn, and charged, to inquire for the body of the County of Davidson and State aforesaid, upon their oath aforesaid, present: That Jessie D. McDonald hereto fore, to wit, on the _____ day of December, 1972, with force and arms, in the County aforesaid, unlawfully, feloniously and fraudulently, and with felonious intent to defraud one Purity Dairies Employees Federal Credit Union, a federally chartered credit union, did obtain from Robert E. Worrall, County Court Clerk or his agent or deputy, clear and unincumbered(sic) title to a 1972 Ford LTD automobile of the value of Three ThousandOne

Hundred Fifty ($3,150.00) Dollars, said automobile being at the time incumbered(sic) by a lien in favor of the Purity Dairies Employees Federal Credit Union, a federally chartered credit union by means of a certain false pretense then and there made by said Jessie D. McDonald to said Robert E. Worrall, County Court Clerk or his agent or deputy, whereas said Jessie D. McDonald falsely and fraudulently represented as follows: that a lien in favor of said credit union, said automobile had been released by said credit union and that there were no incumberances [sic] on said automobile which representation was false and untrue and was made by said defendant with the fraudulent and felonious intent to deprive said Purity Dairies Employees Federal Credit Union, a federally chartered credit union of its said personal property and thereby caused the said Robert E. Worrall to rely on said false and fraudulent representation and to deliver said unincumbered [sic] title to said automobile to the said defendant, contrary to the form of

the statutes in such cases made and provided, and against the peace and dignity of the State of Tennessee.

/s/Thomas H. Shriver, Attorney General

The petitioner states that the interpretation of §39-1901,TCA on January 19, 1976, in case State v. McDonald, at 534 S.W. at 650 is constitutionally unreasonable, since there is nothing to embrace the circumstances in this case to justify the criminal prosecution and the judicial interpretation from the Tennessee Supreme Court, is unreasonable when it included the circumstance in this case, to bring it within the scope of the statute at issue.

In the case at bar, McDonald purchased the 1972 Ford,LTD automobile through a loan from the credit union in the indictment, nearly three months prior to the date in the indictment and several payments were deducted from his pay check with the Purity Dairy Milk Company. During the trial, the contractual agreement which the loan was based, was never in

dispute, nor was McDonald ever accused of providing false information to obtain the loan to purchase the said automobile. The fact McDonald had a written contractual agreement was never presented to the jury during the trial. This fact was properly presented to the Court of Criminal Appeals in various motions and in the oral argument and was a contributing factor that justified the appellate court's decision to reverse the conviction.

In the review by certiorari, in the Tennessee Supreme Court in January of 1976, the court unreasonably overlooked material facts, that: (1) The automobile is the only property in this case and McDonald had possession of the property three months prior to the date in the indictment, pursuant to a valid and undisputed contractual agreement; and (2) There was no indictment that alleged the property to be the 1972 Ford LTD automobile, which was mentioned in the appellate court's judgment; and (3) The jury based it's guilty verdict being the 1972 Ford LTD automobile and not a title to the said

automobile. There can be no dispute that the judicial interpretation of §39-1901,TCA unreasonably included McDonald's prior conduct within the scope of the statute, without a supporting indictment is well within the ex post facto laws, which is prohibited. Doeske v. Wisconsin Dept. of Health and Social Services, 483 F.Supp. 783.

2. The Tennessee Supreme Court has departed From the accepted and usual course of judicial Proceedings, as to call for an exercise of this Court's supervisory power.

The final order that was entered by Mr. Justice William Barker, on March 21, 2000, appears to be based on the fact the original judgment was entered on January 19, 1976 and is now considered to be a closed case.

However, under Tennessee law, an apparent final judgment is not necessarily immune from attack, even after term, where equitable considerations require appropriate equitable relief. U.S. v. Jordan, 186 F.2d 803,affirmed 72 S.Ct. 305, 342 U.S. 911, 96 L.Ed. 682, 72 S.Ct. 286. The lapse of

time between announcement of the judgment and the making of the motion is of no importance. Rush v. Rush, 97 Tenn. 279, 37 S.W. 13 (1896); Wind Rock Coal & Coke Co. v. Robbins, 1 Tenn. App. 734 (1926). Filing of separate or independent suit in equity for relief from judgment is recognized as a permissible remedy under the rule of civil procedure governing relief from judgment on basis of mistake, inadvertence, excusable neglect or fraud. Rule of Civil Procedure, Rule 60.02. Trice v. Moyers, 561 S.W. 2d 153. It is the petitioner's belief that the original order and judgment from the state supreme court on January 19, 1976 was obtained through fraud. The State petitioned the Tennessee Supreme Court for certiorari, requesting a judicial interpretation of Section 39-1901,TCA, which was the statutory basis for the prosecution, when the state did not have a standing to do so, because there were no set of facts that justified this case being prosecuted under §39-1901,TCA and the State Supreme Court, unreasonably rendered a judgment to include the circumstances of this case, within the boundaries of the said

statute. Also, in light of the previous judgment from the appellate court, which reversed the original conviction because McDonald was convicted of a crime that was not charged in the indictment, in violation of the Fifth and Fourteenth Amendments for due process of law, and remanded the case back to the trial court for further proceedings.

To this date, the matter involving the indictment has never been corrected, nor has the case been remanded to comply with the remand order from the appellate court on direct appeal.

The Petitioner, McDonald was not clear on the manner the State Supreme Court reversed the constitutional portion of the appellate court's judgment, without even mentioning the constitutional violations involving the indictment. It is McDonald's belief that he is entitled to know how the State Supreme Court reversed the appellate court's order, without even mentioning the constitutional issue at all. It is clear under territorial law that McDonald had the right to ask the State Supreme Court to explain the unclear order. If the judgment is

ambiguous or obscure, and fails to express the final determination of the court with clarity and accuracy, reference may be had to the verdict and findings for the purpose of ascertaining what was determined. Vanatta v. Vanatta, 701 S.W. 2d 824. A judgment is to be construed as disposing of all the issues, Allen v. Allen, 717 S.W. 2d 311 (Tex.) and the final controversies raised in this case are not consistent with the judgment from the Court of Criminal Appeals.

In a similar case from the United States Court of Appeals for the Sixth Circuit, that court had the opportunity to consider a case that was over 25 years old. In case, Fred Harry Rogers v. Carol Howes, Docket No. 96-1862 and under the Electronic Citation: 1998 Fed. App. 0162P(6th.Cir), that court held that, whenever there is a constitutional deprivation, a petitioner have the right to seek relief from the aggrieved judgment. Unlike Rogers, McDonald did present his constitutional defense and he did obtain a judgment in his favor from the appellate court, but through trickery and fraud, that

judgment was taken away, without any justifiable reasons or explanation. Further, the case at bar is unlike the Rogers case, because Tennessee did not have a procedural default law at the time of McDonald's conviction in January of 1976. McDonald did request a rehearing and a motion to set aside the conviction, which were denied. State v. McDonald, 534 S.W. 2d 650.

CONCLUSION

This is a case that demands equitable relief and since the date of this conviction, the petitioner has earned a Bachelors Degree (BSCE) in Civil Engineering from the Tennessee State University, School of Engineering, in Nashville, Tennessee, with a Grade Point Average (GPA, hereinafter) of 2.78; a Masters Degree (M.Ed.) in Administration and Supervision from Tennessee State University, School of Education, with a GPA of 3.8; an Education Specialist Degree (Ed.S.) in Administration and Supervision from Middle Tennessee State University, School of Education at Murfreesboro, Tennessee, with a GPA of 3.4; and has completed all of the

course requirements for the Doctorate of Education (Ed.D.), passed the qualifying and final comprehensive examinations, with a GPA of 3.8 and has completed half of the requirements for the dissertation. There can be no dispute that this is certainly an appropriate case to consider granting equitable relief as previously permitted in U.S. v. Jordan, Supra.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Jessie D. McDonald

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JOINT APPENDIX

Document	Page[s]
Order denying Motion to Recall Mandates and to Issue a nunc pro tunc order	A-1
Order denying Motion for leave to Move the Court to Reconsider	A-2
Order denying Motion for Relief from Judgment	A-3
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FILED
June 8, 2000

IN THE SUPREME COURT FOR THE STATE OF TENNESSEE

STATE OF TENNESSEE, Appellee,	)	
	)	APPEAL NO.
v.	)	M2000-00491-SC-OT-CV
	)	
JESSIE D. MCDONALD, Appellant.	)	DAVIDSON CRIMINAL NO. B-317

ORDER

Jessie D. McDonald has filed a motion to recall mandates and issue a nunc pro tunc order. After reviewing the motion and relevant history of the appellate proceedings, it is concluded that the motion should be DENIED.

FOR THE COURT:

/s/ WILLIAM M. BARKER, Justice

FILED
June 30, 2000

IN THE SUPREME COURT FOR THE STATE OF TENNESSEE

STATE OF TENNESSEE, Appellee,	)	
	)	APPEAL NO.
v.	)	M2000-00491-SC-OT-CV
	)	
JESSIE D. MCDONALD, Appellant.	)	DAVIDSON CRIMINAL NO. B-317

ORDER

This cause is before the Court upon motion of Appellant, Jessie D. McDonald, "For Leave to Move the Court to Reconsider" its order entered on June 8, 2000, denying the appellant's motion to recall mandate. This Court finds that the motion is not well taken.

Accordingly, IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the motion be, and is hereby, OVERRULED. Costs are taxed against Appellant.

PER CURIAM

Birch, J. - Not participating

PER CURIAM

FILED
MAR 21 2000

IN THE SUPREME COURT FOR THE STATE OF TENNESSEE

STATE OF TENNESSEE, Appellee,	)	
	)	APPEAL NO.
v.	)	M2000-00491-SC-OT-CV
	)	
JESSIE D. MCDONALD, Appellant.	)	DAVIDSON CRIMINAL NO. B-317

ORDER

Appellant, Jessie D. McDonald, filed an amended motion on March 6, 2000 for relief from judgment. Appellant asks this Court to void the Court's judgment reinstating Appellant's conviction. The Clerk filed this Court's judgment on January 19, 1976, and issued mandate. It is the opinion of this Court that the motion must be denied. The appeal is closed and there is nothing further for this Court to do.

Therefore, it is hereby ordered that the motion for relief from judgment is denied. Costs of the proceeding shall be taxed against, Appellant, Jesse D. McDonald.

For the Court:
/S/ William M. Barker, Justice

FILED
APR 05 2000

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, Appellee, v. JESSIE D. MCDONALD, Appellant.

Criminal Court for Davidson County
No. B-317

No. M2000-00491-SC-OT-CV
ORDER

Appellant, Jessie D. McDonald, has filed a motion asking this Court to reconsider its Order entered on March 21, 2000, denying the appellant relief from a judgment of this Court entered on January 19, 1976. Appellant asserts that this Court overlooked material facts in this case, which he believes entitle him to a different judgment. Upon due consideration it is the opinion of this Court that the motion be denied.

Therefore, it is hereby ordered that the motion to reconsider is denied.

For the Court:

/s/ William M. Barker, Justice

Date Printed: 05/09/2000
Date Notice: 05/09/2000
Case Style: State of Tennessee vs. Jessie D. McDonald
Case Number: M2000-00491-SC-OT-CV
Action: Notice Date: 05/09/2000
Notice: Attorney-Mandate Issued Sent::
Trial Court: Davidson County Criminal Court
Trial Court No. B-317

Mandate issue on the above "notice date." The mandate consists of certified copies of the judgment, any order as to costs, and a copy of the opinion. The mandate in its entirety is remitted to the trial court clerk and signifies the end of the case. The clerk's office will not accept any filing after issuance of mandate except those requiring recall of the mandate, those related to withdrawing the record or portions thereof and those related to the assessment of costs.

JSR

C: State Attorney General Paul G. Summers

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . .

[Emphasis added to pertinent section]

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[Emphasis added to pertinent section]

28. USCA § 1257(a)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution . . . . .

[Emphasis added to pertinent section]